IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

CIVIL REVISION APPLICATION NO.789 OF 1998

Smt.Laxmibai Balwantrao Khalkar,
age 70, Occ.Household, R/o.
13, Rajmilap Society, Dindori Naka,
Panchwati, Nashik-3. ..Petitioner
(Orig.Deft.No.1)

v/s.

1. Shri Chandrakant Balkrishna Jadhav,
age 40 yrs. Occ.Business,
1, Manas Apartment, Ramdas Swami
Nagar, Takali Road, Nashik.

2. The State of Maharashtra,
through the Collector, Nashik

3. The Collector, Nashik,
Collector's Office, Old Agra Road,
Nashik.

4. The Superintendent,
State Excise Department,
Collector's office compound,
Nashik. .. Respondents

Mr.P.N.Joshi for the petitioner.

Ms.Geeta Mulekar, A.G.P. for respondent Nos.2 and 3.

CORAM : B.H.MARLAPALLE, J.

DATED : 10th October, 2005

ORAL JUDGEMENT

The petitioner is defendant No.1 in Regular Civil Suit No.380 of 1997 instituted in the Court of Civil Judge, Senior Division at Nashik for declaration and permanent injunction. The defendant No.1 filed an application at exhibit 9

and prayed for rejection of the plaint in view of the bar of section 69 of the Indian Partnership Act, 1932 in asmuch as there was no registered partnership between the plaintiff and the defendant No.1. This application came to be dismissed by the learned IInd Joint Civil Judge, Senior Division, Nashik vide his order dated 26.2.1998 and the said order has been assailed in this revision application.

2. The subject matter of R.C.S.No.380 of 1997 is licence No.96 for sale of country liquor granted by the State Government in favour of late Balwant Dagdu Khalkar at village Dwarka Pakhal Road. It was averred that Balwant and the plaintiff had entered into a partnership agreement on 20.9.93 and the country liquor shop was being run by the said partnership firm. The said defendant No.3 vide his order dated 4.5.94 had granted permission to operate the licence by the partnership firm on an application made on the basis of the partnership deed. Balwant died on 20.6.96 and defendant No.1 is his wife. The planitiff and defendant No.1 entered into an agreement on 3.8.96 so as to run the country liquor shop by way of partnership. The plaintiff alleged that the defendant No.1 did not follow one of the terms of the agreement dated 3.8.96 and no steps were taken by her to opt an order from defendant No.3 to run the liquor shop in

partnership. The plaintiff prayed for declaration that he is a joint licence holder for running the country liquor shop and sought declaration against defendant Nos.1 to 4 to declare him as such. In addition, he prayed for a declaration that the said licence was not issued in favour of defendant No.1 by defendant Nos.2 to 4 and consequently, prayed for the relief of permanent injunction.

3. The planitiff thought of a novel method to defeat the suit without trial and presented an application at Exhibit 9 on the ground that the suit was not maintainable n view of the bar of section 69 of the Indian Partnership Act. In asmuch as he stated that the partnership between the plaintiff and defendant No.1 was not registered and therefore, the suit filed by the plaintiff was not maintainable.

4. It is evident that there was no partnership firm between the plaintiff and defendant No.1 and the agreement dated 20.9.93 signed by late Balwant and the subsequent agreement dated 3.8.96 signed between the plaintiff and defendant No.1 was only an agreement to run the country liquor shop. On the demise of Balwant, the original licence holder, on 20.6.96, the licence was admittedly transferred in the name of the defendant No.1. The suit filed by the plaintiff even in the second round is not

the one filed against the defendant or in respect of the business/property of any firm. Section 69 of the Indian Partnership Act states that no suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm. As per section 4 of the said Act, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually partners and collectively a firm, and the name under which their business is carried on is called the firm name. As per section 6 of the Act, in determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

5. The suit filed by the plaintiff in the instant case did not relate to the business of the partnership in asmuch as the subject matter of the suit is the licence issued by the State Government

and the said licence has been transferred in the name of the defendant No.1. The plaintiff sought to enforce the agreement signed by him with late Balwant initially and subsequently, with the defendant No.1.

6. Under such circumstances, the view taken by the trial court in answering the preliminary issue against the defendant does not suffer from any errors apparent on the face of record and hence, the revision fails.

7. The revision is hereby dismissed. Rule discharged. Interim order stands vacated. The trial of the suit viz. R.C.S.No.380 of 1997 is hereby directed to be expedited and be completed preferably within one year from receipt of the writ by the trial court.

(B.H. MARLAPALLE, J.)